IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

WP(C).No. 19692 of 2007(T)

PETITIONER:

NISHA M.T., D/O.PARVATHI,
VAYATTUPARAMBA PO., KANNUR.

BY ADV. SRI.M.V.AMARESAN.

RESPONDENTS:
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1. **KERALA PUBLIC SERVICE COMMISSION,**
   KANNUR, REPRESENTED BY ITS SECRETARY,
   PATTOM, THIRUVANANTHAPURAM.

2. **CHAIRMAN,**
   KERALA PUBLIC SERVICE COMMISSION,
   PATTOM, THIRUVANANTHAPURAM.

3. **DISTRICT OFFICER,**
   KERALA PUBLIC SERVICE COMMISSION,
   DISTRICT OFFICE, KANNUR.

BY SRI.ALEXANDER THOMAS, SC,KPSC.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.19692/2007-T:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE DIPLOMA CERTIFICATE BEARING SL.NO.110000346 DTD. 23/08/04 ISSUED BY KERALA NURSES AND MIDWIFES COUNCIL.

EXT.P.2: COPY OF THE S.S.L.C. BOOK OF THE PETITIONER.

EXT.P.3: COPY OF THE CASTE CERTIFICATE BEARING NO. 213/2000 DTD. 29/08/2000.

EXT.P.4: COPY OF THE SHORTLIST PUBLISHED BY THE RESPONDENT IN PUBLIC SERVICE COMMISSION BULLETIN DTD. 24/02/07.

EXT.P.5: COPY OF THE CALL LETTER DTD. 06/03/07.

EXT.P.6: COPY OF THE RANK LIST PUBLISHED ON 05/06/07.

RESPONDENT'S EXHIBITS: **NIL.**

//TRUE COPY//

prv.

V.GIRI, J.

W.P.(C).No.19692 of 2007 T

Dated this the 13th day of December, 2007.

JUDGMENT

Petitioner applied for the post of Staff Nurse pursuant to a notification issued by the Public Service Commission. She had applied as a member of the Scheduled Caste as her mother belongs to Pulaya Community, though her father admittedly belongs to Christian Community. Though the petitioner was called for interview, she could not produce the caste certificate showing that she belongs to a scheduled caste. So, she prays that she may be treated as a general merit candidate since she is not in a position to claim the status of a scheduled caste. The mother's caste, in the circumstances, could not have been taken advantage of by the petitioner. The Public Service Commission, finding that the petitioner has not been able to substantiate her claim that she belongs to scheduled caste, did not include her in the rank list. Hence this writ petition.

2. In the counter affidavit filed by the Public Service Commission, it is pointed out that the petitioner

can only claim the cast of her father who belongs to Roman Catholic Community, obviously, the petitioner could not have claimed the status of scheduled caste merely for the reason that her mother was a scheduled caste. In the matter of public employment, a candidate can only claim the caste status of the father as declared by the Supreme Court in **Punit Rai v. Dinesh Chaudhary {2003(8) SCC 204}** to the effect that a person can claim the caste status of the father, if the father belongs to Scheduled Caste.

3. Two sets of applications were available, one for the members of the Scheduled Caste to be purchased for a price of Rs.5/- and the other, for all others which could be purchased at Rs.10/-. It was always open to the petitioner to apply in the open merit category. If she were to apply as a scheduled caste, she was bound to produce a certificate evidencing her caste as a scheduled caste. Petitioner obviously could not do so and at this stage even the petitioner does not have a claim that she belongs to scheduled caste. In the circumstances, the stand taken by the Public Service Commission cannot be stated to be illegal.

4. Learned counsel for the petitioner alternatively contended that the petitioner's application must be treated as one which enables her to come under the General category. Petitioner relies on the judgment of this court in W.P.(C)No.14277/07. The said case dealt with the claim of a person, whose father was a Veluthedath Nair and the mother belonged to the Lathin Catholic Community. A form is available for persons who belong to OBC. The same form is available to persons coming under general merit category. Apparently, the claim made by the petitioner therein to the effect that she is entitled to the reservation of Lathin Catholic, was not accepted by the Public Service Commission and the stand taken by the Public Service Commission was affirmed by this court. Nevertheless, the petitioner therein had claimed that she may, therefore, be considered as an open merit candidate. This was accepted by this court. Petitioner herein says that similar direction may be issued to the Public Service Commission.

5. It may not be possible to do so in the present case. There are two different sets of applications available,

one available to persons who claim the status of a scheduled caste and a separate set of application for persons who come under general category. The stand taken by the Public Service Commission, that the petitioner herein cannot claim the status of a scheduled caste obviously requires to be affirmed. This is because the application claiming the status of a scheduled caste is being considered as a separate category. Because of the inability on the part of the applicant to show his/her status as a scheduled caste, the same application cannot be taken into account for considering her in the general category. This will only be possible in the case of persons who claim the status of an OBC, because the OBC candidate also submits the same application. If he/she is not able to substantiate his/her claim, it will not result in rejection of his/her application. In those cases, it is open to the Public Service Commission to still consider the application provided, that person will come otherwise come within the zone comprehending the general category. I also note that it was always possible for the petitioner to apply in the general category. It seems that the petitioner must

have been aware of the fact she could not claim the status of a member of a scheduled caste by reason of her mother's caste, especially in the light of the declaration made by the Supreme Court in **Punith Rai's** case **{2003 (8) SCC 204}** which was adopted by the Government and issued as an executive order.

For all these reasons, I do not find any reason to interfere with the impugned order. The writ petition is bereft of any merit and the same is accordingly dismissed.

Sd/-

(V.GIRI)

JUDGE

sk/

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